

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-4001 AHM (JCx)	Date	May 27, 2009
Title	AVELARDE v. HOU, et al.		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE		
Stephen Montes	Not Reported		
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys NOT Present for Plaintiffs:	Attorneys NOT Present for Defendants:		

Proceedings: IN CHAMBERS (No Proceedings Held)

The pre-trial conference in this case is scheduled for June 1, 2009. No motions have been filed by any party since the Complaint was filed on June 18, 2008. Plaintiff's attorney, however, reports that he lost contact with his client in mid-April 2009. On May 20, 2009, this Court ordered the attorney, Anthony Jenkins, to file "a declaration setting forth all of the efforts he has made to contact Plaintiff. The declaration must also explain whether Mr. Jenkins intends to proceed on behalf of Plaintiff in the absence of any client contact, and, if so, how." In addition, the Court ordered Defendants, who have been proceeding *pro se*, to notify the Court whether they were willing to re-open their settlement offer if Plaintiff resurfaces.

On May 26, 2009, Attorney Jenkins filed his own brief declaration and a declaration by his legal assistant, Andre Morazan. Mr. Morazan states that he made several calls to four different telephone numbers provided by Plaintiff, visited the residential address the Plaintiff provided, sent a letter to the same address, and contacted the police department in Colima, Mexico after Defendant Eduardo Santillan told him that he believed Plaintiff had returned to his home there. Despite these efforts, Mr. Morazan was unable to locate Plaintiff. Attorney Jenkins's declaration fails to explain "whether [he] intends to proceed on behalf of Plaintiff in the absence of any client contact, and, if so, how." On May 26, 2009, Attorney Jenkins also filed a Memorandum of Contentions of Law and Fact, and an Ex Parte Application to continue the pre-trial conference and trial dates by sixty days. Defendants, meanwhile, filed declarations stating that they are willing to "reopen a new settlement offer" until June 1, 2009, provided that Plaintiff appears in person, signs a release form by that date, and appears at the pre-trial conference on June 1, 2009.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-4001 AHM (JCx)	Date	May 27, 2009
Title	AVELARDE v. HOU, et al.		

Unless Attorney Jenkins can establish at the June 1, 2009 pre-trial conference that he has located Plaintiff and has a tenable and current working relationship with Plaintiff, the Court intends to dismiss this case for lack of prosecution, given that this case cannot be pursued without the participation of Plaintiff. *See* Fed. R. Civ. P. 41(b). (Plaintiff's counsel implicitly admitted as much by failing to respond to the Court's order that he explain whether and how he intends to proceed, and by requesting a sixty-day continuance.) In order to avoid dismissal for lack of prosecution, Plaintiff himself must also appear at the June 1, 2009 pre-trial conference, but may do so telephonically.

	:	
Initials of Preparer		SMO